

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DERRICK EVANS,)	
)	
Movant,)	
)	
v.)	No. 4:10-CV-1490 CAS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

The Court previously ordered movant to show cause why his motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 should not be dismissed as time-barred. Movant responds that he was being transferred from FCI Greenville to USP McCreary during May 2009. Movant states that during that time he was not aware of whether he was going to be permitted to file a motion for rehearing with the United States Court of Appeals for the Eighth Circuit. Movant states, however, that he was aware as of June 8, 2009, that the Eighth Circuit had issued its mandate. Movant argues that he is entitled to equitable tolling.

Under the doctrine of equitable tolling, the AEDPA's statutory limitations period may be tolled if a petitioner can show that (1) he has been diligently pursuing his rights and (2) an extraordinary circumstance stood in his way. Holland v. Florida, 130 S. Ct. 2549, 2562 (2010). Equitable tolling is a flexible procedure that involves both recognition of the role of precedent and an "awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case." Id. at 2563.

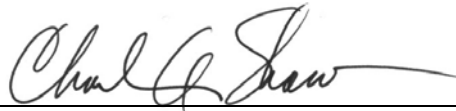
Nothing in movant's response demonstrates that he is entitled to equitable tolling. Movant was aware in June 2009 that the Eighth Circuit had denied his appeal. And movant has not shown

that he was prevented in any way from timely filing his § 2255 motion. Movant has not demonstrated either that he has been diligently pursuing his rights or that extraordinary circumstances stood in his way. As a result, the Court will dismiss this action as time-barred.

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 is **DISMISSED**, pursuant to Rule 4 of the Rules Governing § 2255 Cases.

An Order of Dismissal will accompany this Memorandum and Order.

A handwritten signature in cursive script, reading "Charles A. Shaw", written in black ink.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 20th day of September, 2010.